

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Greenbelt Division)**

UNITED STATES OF AMERICA
for the use and benefit of
TBN ASSOCIATES, INC.

Plaintiff,

v.

**TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA,
One Tower Square
Hartford, CT 06185**

Defendant.

Civil Action No. _____

COMPLAINT

Plaintiff, the United States of America for the use and benefit of TBN Associates, Inc. ("TBN"), by and through its undersigned counsel, hereby brings this Complaint against Defendant, Travelers Casualty and Surety Company of America ("Travelers"), and in support thereof, avers as follows:

Parties

1. TBN is a corporation organized and existing under the laws of the State of Maryland with its principal place of business in Lanham, Maryland. TBN provides and installs mechanical/thermal insulation (e.g., installs insulation on mechanical components, piping and ductwork) for commercial and public projects in and around Maryland. The cause of action asserted herein arises from those operations.

2. Upon information and belief, Defendant, Travelers, is a corporation organized and existing under the laws of the State of Connecticut with its principal place of business in Hartford,

Connecticut. Travelers is a commercial surety company that issues, among other things, payment and performance bonds on public and private construction projects in the State of Maryland.

Jurisdiction and Venue

3. This action arises, and this Court has jurisdiction pursuant to the Miller Act, 40 U.S.C. §§ 3131 to 3134, as the bond upon which this Complaint is based was issued pursuant to the provisions of the Miller Act, 40 U.S.C. § 3131.

4. Venue is proper under the Miller Act, 40 U.S.C. § 3133, and pursuant to 28 U.S.C. § 1391 because the construction project which is the subject of this Complaint is located in the State of Maryland.

Background Facts

5. At all times relevant hereto, Gilbane Building Company (“Gilbane”) was the general contractor concerning a construction project for the United States of America, National Institute of Health, under Prime Contract No. HHSN292201000030C (the “Project”). The Project was for renovation of the E and F Wings of NIH Building 10 in Bethesda, Maryland.

6. On or about August 3, 2010, Gilbane and the United States of America entered into a contract concerning the construction of the Project (the “Government Contract”).

7. As part of the requirements under the Government Contract, Gilbane, as bond principal, furnished the United States of America a Payment Bond in the penal amount of One Hundred Thirty One Million, Six Hundred and Forty Thousand, One Hundred Dollars and No Cents (\$131,640,100.00).

8. The Bond was duly accepted by the United States of America as Obligee.

9. The surety on the Payment Bond is Travelers. Pursuant to the Payment Bond, both Gilbane and Travelers jointly and severally bound themselves to pay subcontractors and suppliers for

labor, materials, and services provided on the Project. A copy of the Bond is attached as **Exhibit A** and is incorporated herein by reference.

10. In order to complete the Prime Contract, Gilbane entered into a subcontract agreement with JCM Associates, Inc. ("JCM"), wherein JCM agreed to perform mechanical and plumbing work and supply mechanical and plumbing materials for the Project and Gilbane agreed to pay for the mechanical work (the "Subcontract").

11. In turn, JCM hired Plaintiff TBN to provide mechanical insulation services and materials necessary to the Subcontract and agreed to pay for such services and materials in accordance with a Sub-subcontract commencing on or about April 28, 2011 (the "Sub-subcontract").

12. Pursuant to the Sub-subcontract, from on or about April 28, 2011, through on or about February 10, 2014, TBN provided mechanical insulation services and materials to the Project and for which payment in full has not been made.

13. The reasonable and agreed value of such services and materials is Two Million, One Hundred Thirteen Thousand, Six Hundred Twenty Five Dollars and No Cents (\$2,113,625.00) for base Sub-subcontract work and approved Sub-subcontract modifications.

14. TBN has been paid One Million, Six Hundred Eight Thousand, Four Hundred Eight Dollars and No Cents (\$1,608,408.00), leaving a balance due for unpaid Sub-Subcontract sums through February 10, 2014 in an amount of Five Hundred Thousand, Two Hundred Seventeen Dollars and No Cents (\$505,217.00).

15. In addition to the amounts set forth above, TBN has also performed additional services and delivered additional materials for change order work to the Project (to include unpaid change work, unpaid demobilization costs, and unpaid delay, inefficiency, overtime, and acceleration costs) requiring

an upward adjustment to the Sub-subcontract value and further payment for the value of these services and materials incorporated into the Project in an amount no less than Five Hundred Thousand Dollars and No Cents (\$500,000.00).

16. Pursuant to various correspondence and e-mails, to include a letter dated April 17, 2014, and signed by Steve Shegogue, President of TBN, Gilbane was notified of an open balance and TBN requested payment directly. A copy of the April 17, 2014 letter is attached as **Exhibit B** and incorporated by reference herein.

17. Notwithstanding TBN's notices to and demands on Gilbane and Travelers for payment, TBN remains unpaid for Sub-subcontract work performed and labor, materials, equipment and services provided to the Project in an amount no less than the sum of One Million, Five Thousand, Two Hundred Seventeen Dollars and No Cents (\$1,005,217.00).

18. JCM, Gilbane, and the United States accepted and benefited from the services and materials provided by TBN for the Project.

19. The last date on which materials were provided or services were performed by TBN to and/or for use on the Project was February 10, 2014. While the written notices to Gilbane and Travelers (to include Exhibit B) reference January 28, 2014 as the last day on which materials were provided or services were performed by TBN to and/or for use on the Project, a review of the Project record indicates additional work was performed by TBN through February 10, 2014.

20. TBN has not received payment of the balance due and owing from either Gilbane or Travelers.

21. Within ninety days from February 10, 2014, TBN gave timely, statutory notice to Gilbane and Travelers of this Miller Act Claim and its intent to pursue a Miller Act claim.

22. Ninety days has elapsed but one year has not elapsed from the date the last materials and services were furnished by TBN for the Project.

23. Moreover, upon information and belief, JCM also filed a related Miller Act claim under the same Payment Bond, which incorporated TBN's claim and the amounts claimed herein.

24. All conditions precedent for the bringing and maintenance of this action have been performed or have occurred.

COUNT I – VIOLATION OF THE MILLER ACT 40 U.S.C. §§ 3131 *et seq.*

25. The United States of America for the use and benefit of TBN incorporates the preceding allegations as if fully set forth herein and further states as follows:

26. TBN provided mechanical insulation services and materials to the Project and for which payment in full has not been made.

27. Gilbane and Travelers received the value of and benefited from the services and materials delivered by TBN to the Project.

28. TBN remains unpaid for subcontract work performed and labor, materials and services provided to the Project in an amount no less than One Million, Five Thousand, Two Hundred Seventeen Dollars and No Cents (\$1,005,217.00).

29. Despite TBN's requests for payment, TBN has not received payment of the balance due and owing from Gilbane or from the surety, Travelers.

30. Pursuant to the Payment Bond, Travelers is liable to TBN for unpaid subcontract work performed and unpaid labor, materials and services provided to the Project by TBN in an amount no less than One Million, Five Thousand, Two Hundred Seventeen Dollars and No Cents (\$1,005,217.00).

WHEREFORE, the United States of America, on behalf of Plaintiff TBN Associates, Inc., requests judgment against Defendant Travelers Casualty and Insurance Company of America in the following amounts:

- A. For the principal sum of One Million, Five Thousand, Two Hundred Seventeen Dollars and No Cents (\$1,005,217.00);
- B. For interest from February 10, 2014, at the rate prescribed by law;
- C. For costs of this action; and
- D. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

TBN ASSOCIATES, INC.

/s/

Brian Cashmere, Esq. (USDC MD Bar No. 14170)
(bcashmere@williamsmullen.com)

WILLIAMS MULLEN, P.C.

8300 Greensboro Drive, Suite 1100

Tysons Corner, Virginia 22102

(703) 760-5200 (telephone)

(703) 748-0244 (facsimile)

Counsel for Plaintiff TBN Associates, Inc.